

Memorandum to the Commissioner

Holder: Sudbury Pines Extended Care Facility

At: 642 Boston Post Road
Sudbury, MA 01776

Project Number: Original Emergency DoN Project- 4-1523
This Amendment- SPEC 23051912 AM

Filing Date: June 9, 2023

This memorandum presents for Commissioner's review and action, the Determination of Need ("DoN") Program's recommendation regarding an amendment request for a significant change by Sudbury Pines Extended Care Facility ("SPEC"), to increase the approved maximum capital expenditure ("MCE") of the Emergency DoN from \$2,750,000 (April 2010 dollars) to \$7,037,407.03 (March 2023 dollars) to account for unforeseen costs associated with replacing its approved wastewater treatment plant ("WWTP"). As described further herein, the Holder seeks approval for an increase in the MCE without a change in scope.

This amendment request falls within the definition for a Significant Change¹, specifically: "(2) Any increase or decrease in the maximum Capital Expenditure over 10% of the inflation adjusted originally approved total expenditure. An increase shall be allowed only for contingencies that could not have been reasonably foreseen, that are not reasonably within the control of the Holder, as determined by the Commissioner, and for which the inflationary adjustment contained within 105 CMR 100.310(A)(9) is not appropriate."

Background

¹ Significant Change means:

- (1) Any change, modification, or deletion of components within a previously issued Notice of Determination of Need that is not an Immaterial Change, as determined by the Commissioner;
 - (2) Any increase or decrease in the maximum Capital Expenditure over 10% of the inflation adjusted originally approved total expenditure. An increase shall be allowed only for contingencies that could not have been reasonably foreseen, that are not reasonably within the control of the Holder, as determined by the Commissioner, and for which the inflationary adjustment contained within 105 CMR 100.310(A)(9) is not appropriate;
 - (3) Any request for modification or deletion of any Standard or Other condition set forth within a Notice of Determination of Need that is determined to be material by the Department;
 - (4) Unless otherwise approved by the Department, any extension of the authorization period of an approved project as specified in a Notice of Determination of Need; or
 - (5) Any build-out of shell space that was subject to a Notice of Determination of Need.
- Any change to a project the Commissioner deems to be so significant that it alters the previously issued Notice of Determination of Need to a degree that it constitutes a new project will require the issuance of a new Notice of Determination of Need.

The Facility

SPEC is a licensed 92-bed long term care facility (“LTCF”)² that the Holder reports cares for complex patients, including many homeless individuals, and individuals that come from psychiatric hospitals and prison. It has a 34-bed locked and secured unit that provides care to patients with behavioral health diagnoses such as bi-polar disorder, schizophrenia, and psychosis. The 58 remaining beds are in a long-term care unit where many residents also have behavioral diagnoses. The LTCF has a long-term population with extended lengths of stay.³

Original Approval- Emergency DoN

On June 7, 2010, the Department approved an Emergency DoN for SPEC to repair extensive flood damage from historic rainfall during multiple storms that impacted the LTCF and its property, including eight (8) septic fields that the Holder asserts, had been in in good working order prior.⁴ Up to eight inches of water and septic waste overflowed upward into the LTCF, severely damaging the ground and lower levels.

When SPEC originally applied for the Emergency DoN⁵ the flooding was ongoing, and the full extent of the damage, the necessary demolition, repair, and replacement costs that would accrue, were not known,⁶ however, based on good faith estimate SPEC requested, and the Department approved the Emergency DoN with a “preliminary”⁷ MCE of \$2,750,000 (April 2010 dollars) which included \$1,500,000 for a WWTP to replace the septic fields.

Environmental Impact

The original four (4) septic fields were built in 1965, and four (4) additional septic fields were added throughout the 1980s, 1990s and early 2000s. In 2001, the Massachusetts Department of Environmental Protection (“DEP”) determined that half of the SPEC’s property and part of the LTCF was over the edge of the 2-mile radius of the Zone 2 Nitrogen Sensitive Zone for the Town of Sudbury Water Supply. Following the flooding, this determination required SPEC to replace the septic fields as part of the repairs to address the flooding that occurred.⁸ Since, the applicant stated cost estimates were preliminary in the original emergency approval, the Department was aware that the Holder would come back with final costs.⁹

² Built in 1963-5

³ Staff inquired as to whether there are 3 and 4 bedded rooms. The Holder responded via e-mail 6.9.23, “The Facility currently has four 4-bedded rooms and is part of the de-densification litigation filed against the Commonwealth.”

⁴ SPEC also reported in the original request, that the area (Middlesex County) encompassing the LTCF had been declared to be a Federal Disaster Area.

⁵ April 26, 2010, pursuant to 105 CMR 100.333-100.334 of the DoN regulations that was in place at the time

⁶ Including exposure of asbestos tiles and required abatement.

⁷ See Decision Letter- <https://www.mass.gov/doc/exhibits-pdf-sudbury-pines-extended-care-facility/download>

⁸ In the late 1990s switching mechanism were put in place to allow some of the fields to dry for a couple of years while the other fields were online and active.

⁹ This process is not uncommon for LTCF applicants as DoN approval of costs is linked to increases in the capital

The Holder states it has made substantial and continuing progress toward implementing the Project with the flood related repairs to the LTCF being completed over the first four years of project approval. Flood and septic damage abatement also occurred which included the following: re-routing failed systems by digging up the parking lot and piping to the Town storm drains; gutting the lower level of the LTCF to install new drains; installing two new septic tanks; manually digging up the entire foundation to install 1,500 linear feet of new drains; rerouting sewage to different/new septic fields, septic pumping, installing new filters, and weekly manual cleaning by LTCF staff, which have increased costs.

The Applicant states it has encountered numerous delays in installing the new WWTP due to numerous incongruous local and state requirements. For example, SPEC's engineers and attorneys worked with the DEP on the re-design of the WWTP and the DEP signed off. As required, SPEC went to the Town of Sudbury where input by multiple Town boards, committees and interested parties occurred; this process has taken 9 years.¹⁰ The Town's required design changes needed to go back to the DEP. Subsequently, the Attorney General issued a consent order on behalf of DEP to mandate that the WWTP be designed and engineered to include a Mass Bio-Reactor system. Further reasons for delays include COVID-19 interruptions and supply chain disruptions. The Applicant reports that all of these efforts have been ongoing since 2014 and have driven up costs.

Staff inquired as to whether the WWTP had received all of the final approvals prior to filing this Amendment. The Applicant responded that the Zoning and Conservation Commission's permits are in place; DEP is reviewing the Groundwater Discharge Permit application and has requested some additional information which the project engineer is working on. It is possible that the DEP review will result in small modifications to the WWTP design and that such changes are usually accepted as minor modifications which require no further permits or any official amendment.

Impact on Cost

The regulation requires that a Holder submit a description of the proposed change along with associated cost implications. The Holder provided the following details.

WWTP Equipment and Construction Costs	\$1,800,000
WWTP equipment and related construction costs have increased significantly since 2010. To comply with the regulatory requirements for the equipment and installation, SPEC has had to hire multiple engineers.	
Interior Work	\$70,000
Interior work (of the LTCF) to accommodate the WWTP includes adding grease traps which required digging up the LTCF's kitchen and hallways.	

reimbursement component that the Center for Health Information and Analysis reviews.

¹⁰ Parties included: the zoning board, conservation commission, board of health, planning board, engineering peer review oversight, public works, and the fire department.

Electrical	\$770,000
In addition to all the related short-term fixes that have been put in place since 2010, during the WWTP design phase it was determined that the current electrical system would not support the WWTP and as a result, solar panels that will produce sufficient energy to meet the demands of the LTCF and the needs of the WWTP will be installed with related electrical work that includes consolidation of electric lines, new panels, connection to the generators The LTCF must also install a pad mounted 500 kvh transformer.	
Gas Lines	\$100,000
To support the WWTP, gas lines must be moved which includes repaving the driveway.	
Water Well	\$40,000
The WWTP design requires installation of a water well to accommodate the laundry and to irrigate the property to comply with landscaping required by the Town of Sudbury.	
Landscaping	\$350,000
The Town of Sudbury requires significant site work and landscaping including tree and stump removal, adding new septic fields, pumping stations, and creating a staging area for the WWTP and then returning the property to its original state.	
Permits and Ancillary Costs	\$100,000
The additional permitting process and other ancillary costs for the Project including pre-and post-filing costs and financing; including COVID-19 related disruptions to the timely review and issuance of permits for the WWTP.	
TOTAL MCE cost increase requested	\$3,230,000

As noted in the above description, the Holder requests an increase in the MCE of \$3,230,000 (2023 dollars) that is solely related to the unforeseen costs associated with installing the WWTP. This is over 10% of the inflation adjusted original approval and thus requires filing of this Amendment.

Approved MCE (April 2010)	\$2,750,000.00
Approved MCE Adjusted for inflation (March 2023)	\$3,807,407.03 ¹¹
Additional WWTP Costs	\$3,230,000.00
Requested MCE	\$7,037,407.03

The Holder states the Proposed Project should have minimal to no cost implications for the Holder's existing Patient Panel since given the large public payer mix, payments are preset amounts. Private pay rates may experience limited increases; however, the Holder's private payers comprise ~11% of their total, while Medicaid and Medicare, whose fees are fixed, comprise ~84% and ~4.7% respectively of the total payer mix.

¹¹ Based on the Department of U.S. Labor Statistics CPI Inflation Calculator based on the Consumer Price Index for All Urban Consumers (CPI-U) US city average services for all items, not seasonally adjusted.

Payer	Percentage of Total
Medicaid (including MCOs)	84%
Medicare	5%
Private	11%
TOTAL	100%

Staff Analysis and Recommendation

Staff reviewed the 2010 original emergency DoN request and the Commissioner's Decision Letter to determine whether the request falls within the scope of that Approval. Staff notes the following:

- This request falls within the definition of Significant Change as the requested increase is greater than 10% of the originally approved MCE.
- Costs to keep the septic fields in operation have been substantial, due to required weekly maintenance and repairs.
- The extent of the regulatory hurdles among multiple town committees and the state DEP was not foreseeable.
- The COVID-19 associated delays to gaining approvals and supply chain inflationary factors were not foreseeable prior to the pandemic at the time of project approval.
- This Amendment does not include any expansion of beds or of clinical space therefore there would be no impact on the Patient Panel regarding clinical services or access.

Staff finds that the increase in costs and extent of the modifications to the WWTF could not have been reasonably foreseen and were not within the control of the Holder. Further, the Holder has made substantial and continuing progress on the Project. Staff further finds that the amendment request for a significant change is within the scope of the original Emergency DoN request and reasonable, as is required by 105 CMR 100.635(A).

Therefore, Staff recommends approval of this Amendment subject to one Other Condition pursuant to 105 CMR 100.360.

Other Condition

1. From the date of approval of this Amendment, the Holder shall report to the DoN Program on the progress of WWTP, annually and until completion of the project.